

telecommunications services. In so doing, SNET suggests that the general public has a preference for a retail provider capable of offering a broader set of telecommunications and information services than is currently available from SAI. Concern has been expressed in this proceeding that permitting SAI to assume responsibility for services currently offered by the Telco would unfairly advantage SAI in competition with other CLECs.

The Department has considered SNET's proposed expansion of SAI's line of products and services and finds nothing in either the state or federal statutes that explicitly or implicitly precludes such an initiative by the corporation. The Department also finds no compelling evidence to suggest that permitting SAI to offer a broader set of products and services to the retail subscriber in any way places the general public at greater risk of abuse by SNET and its subsidiaries.

The products and services to be offered by SAI constitute repackaged wholesale offerings of the Telco, customer premise equipment formerly provided by SNET Diversified Group and contracted offerings of other SNET subsidiaries and non-affiliated services providers. Those Telco wholesale offerings used by SAI to construct its retail telecommunications services remain subject to the general availability requirements stipulated for such services in both Conn. Gen. Stat. § 16-247b and §251(c)(4) of the 1996 Federal Act. Any expansion by SAI of the complement of products/services it offers does not in any way diminish the applicability of those two statutory provisions to the Telco. In the Department's view, the scope of retail participation defined by SNET for SAI is independent of the statutory obligations for resale and unbundling applicable to the Telco.

It is reasonable to assume that the family of products/services offered by SAI will continue to change over time irrespective of the availability of certain Telco services. The interest of the Department in this matter is limited to ensuring that any product/service expansion envisioned for SAI does not unduly disadvantage other prospective CLECs seeking to avail themselves of the same material sourcing options available under Conn. Gen. Stat. §16-247b and §251(c)(4) of the 1996 Federal Act. Any effort or ability of SAI to control availability of underlying technology available from the Telco would be counter to the interests of the public and this Department. The Department will hold the Telco accountable in future proceedings to ensure that its administrative and operational support for a broader set of SAI products and services does not discriminate against other market participants.

In response to the suggestion by some participants that the Department take a broader interest in such issues, it is important to note that there exist limits to the Department's authority. Specifically, the Department is not authorized to challenge any commitment by SNET or SAI to enhance the retail product/service family of SAI with products/services either directly contracted from other SNET nonregulated affiliates or licensed from nonaffiliated commercial enterprises. Any such marketing agreement falls outside the statutory authority of the Department until such time as one of the signatory parties is the Telco. With that understanding forming the foundation for its position on the issue of product/service expansion, the Department is of the opinion that

retail representations by SAI for nonregulated and/or nonaffiliated products/services providers are both permissible and desirable from the public standpoint. However, any offering made available by the Telco must be made available on the same general terms and conditions to all CLECs.

In summary, under the reorganization proposal SAI, acting as the retail representative of SNET, is entrusted with a larger set of product/services offerings. Accordingly, SAI achieves some additional latitude in how it presents itself to the retail market vis-à-vis other prospective entrants. With a broader product/service line, SAI has the ability to package its capabilities in a manner consistent with the market's preferences and to differentiate itself from other prospective competitors. In the Department's view, both pursuits are consistent with the goals of the state and federal statutes and, accordingly, warrant Department endorsement. The Department finds no objection to broadening SAI's product/service family.

## **5. SAI Regulatory Treatment**

SNET has proposed that SAI be subjected to the same state and federal regulatory requirements as are imposed on other CLECs.<sup>18</sup> SNET claims that if SAI's request for a CPCN in Docket No. 97-03-17 is approved under the terms and conditions specified in Docket No. 94-07-03, SAI will be a CLEC no different than other CLECs. Opponents of SNET's proposal generally argue that even if SAI's request for a CPCN is approved in Docket No. 97-03-17, it will be impossible to consider SAI simply another CLEC. Such opponents assert that market position and brand name will accord SAI an unwarranted competitive advantage in a competitive market that cannot be matched by competitors. Accordingly, some participants recommend that the Department impose additional strictures on SAI to normalize the market inequities that otherwise will exist in the future.

The Department has considered the arguments set forth on the issue of regulatory treatment of SAI and notes that Conn. Gen. Stat. §16-247g(b)(3) of the Conn. Gen. Stat. specifies only three conditions that may be considered by the Department when evaluating an applicant's request for a CPCN: financial resources, managerial ability and technical competency. The Department is not permitted by law to take into consideration the relative impact, good or bad, upon the market of participation by an applicant seeking a CPCN. Additionally, the Department cannot waive or supplement the areas of consideration specified in the statute as the case may warrant in order to realize some desired public policy goal. Clearly, Conn. Gen. Stat. §16-247g(b) provides little room for the liberal interpretation sought by some

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<sup>18</sup> The Department has previously certified 19 applicants including AT&T and MCI, both parties to this proceeding. Application procedures for authority to operate in Connecticut as a CLEC were established by this Department in accord with Section 16-247g of the Conn. Gen. Stat. in Docket No. 94-07-03 DPUC Review of Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity. All of the parties present in this proceeding including AT&T, MCI, NECTA, and OCC actively participated in Docket No. 94-07-03, which set forth the prescribed tests and standards for certification of all CPCN applications.

participants in this proceeding.

Separate from that view, but equally relevant to the subject, is the fact that the Department has repeatedly expressed an unwillingness to adopt any policy, position or interpretation that constitutes asymmetrical regulation in order to stimulate broader corporate participation in the telecommunications markets. Nothing has been presented in this proceeding to suggest that either the Connecticut General Assembly or the United States Congress empowered the Department to erect arbitrary and capricious entry barriers in direct contradiction of Conn. Gen. Stat. §16-247c(c) and §253 of the 1996 Federal Act and to apply them exclusively to SAI in this proceeding. The Department will not pursue policies that simply serve to sustain an unwarranted advantage by one competitor over another. The Department affirmed that position in Docket No. 94-07-03 and finds no compelling reason in this proceeding to retreat from its position.

Therefore, the Department will not recommend any additional regulatory tests, standards or requirements above those specified in Conn. Gen. Stat. §16-247g and previously applied to other CPCN applicants be appended to the application of SAI for a CPCN in Docket No. 97-03-17. Furthermore, the Department remains of the opinion that no new evidence beyond that presented in Docket No. 94-07-03 has been introduced to this proceeding by the parties which suggests that the act of conferring a CPCN upon SAI is either inconsistent with provisions made in the 1996 Federal Act, contrary to the best interests of the public or fails to support the goals set forth in Conn. Gen. Stat. §16-247a. Accordingly, SAI's application for a CPCN in Docket 97-03-17 shall be subject to the same tests, standards and requirements applied to any other CLEC applicant. If, upon review of the SAI application the Department deems it appropriate to confer CLEC authority upon SAI, it will accord the same privileges and impose the same responsibilities on SAI as any other certificated CLEC.

## **6. Telco Regulatory Treatment**

SNET proposes that the Department continue to treat the Telco as a public service company subject to rules and regulations set forth by the Department for public service companies under §16-262i of the Conn. Gen. Stat. and the orders imposed by the Department in its Decision in Docket No. 95-03-01. Additionally, SNET commits to operate the Telco as an ILEC under the provisions set forth in §§251 and 252 of the 1996 Federal Act. According to SNET, such commitments sufficiently protect the interests of the public in matters of service and price.

The Department has reviewed SNET's proposal and finds no evidence or argument put forth by the participants that would require the Department to revise or rescind the regulatory framework prescribed for the Telco in Docket No. 95-03-01. In that proceeding the Department sought to construct a set of operating parameters that afforded the Telco sufficient opportunity to compete fairly and the public sufficient opportunity to realize affordable alternatives for service. The Department has sought in this proceeding to advance those same goals in the context set down in the March 13, 1996 Decision in Docket No. 95-03-01. Nothing submitted in this proceeding suggests

that those goals will not be realized if SNET's Proposal is adopted and the regulatory framework set forth in Docket No. 95-03-01 for the Telco is maintained.

The Department regards the Proposal as little else than a realignment of certain responsibilities currently performed by various subsidiary business units on behalf of SNET. However, in the proposed realignment, the Telco has not expressed an interest in relinquishing any of the responsibilities entrusted to an ILEC under §§251 or 252 of the 1996 Federal Act and §§ 16-247b, 16-247g and 16-247k of the Conn. Gen. Stat. With the exception of restricting sales of telecommunications services to CLECs and IXCs, the operations and administration responsibilities performed by the Telco will remain relatively unchanged.

Testimony submitted in this proceeding strongly affirms SNET's commitment to maintain the duties and obligations set forth in both state and federal statutes for the Telco. That decision preserves the ability of the Department to directly and independently exercise its regulatory authority on behalf of competitors and the Connecticut public. With that commitment by SNET, the Department is confident that the principles set forth in Docket 95-03-01 are sufficient to govern the activities of the Telco under the proposed Plan of reorganization. The Department finds no need to supplement or modify its previously introduced framework for regulating the Telco. On a going-forward basis, the Telco will continue to operate as an ILEC for purposes of enforcing §§251 and 252 of the 1996 Federal Act and as a telephone company for purposes of enforcing Conn. Gen. Stat. §16-247b.

It warrants noting that in this proceeding and Docket No. 95-03-01, the Department sought to invoke authority accorded it by the United States Congress under §251(d)(3) of the 1996 Federal Act to delineate and demarcate rules of engagement for incumbent and prospective market entrants as a means of promoting fair and equitable competition. In doing so, the Department saw a corresponding need to prescribe the role of regulation as narrowly as possible so that forces of the market place could supplant regulation as the principle determinant of corporate strategy and management actions. The Proposal further reduces the role, responsibility and regimen of the Department already narrowed in Docket 95-03-01, but in no way conflicts with the principles and precepts outlined in that proceeding for overseeing the Telco in a competitive market. Adoption by the Department of the proposed treatments of SAI as a CLEC and the Telco as an ILEC offers material benefit to the Department and to the Connecticut public by simplifying the scope and scale of regulation necessary to ensure market discipline.

## **7. Current Telco Service Offerings**

SNET proposes to establish SAI tariffs for all Telco service offerings to be effective at the time SAI commences its retail marketing initiatives. SNET also proposes to set rates for Telco offerings using two distinct approaches depending upon the regulatory classification of the specific offering. Specifically, SNET proposes to set wholesale service rates for current Telco retail service offerings at a level equivalent to the current retail price minus the Telco's avoided cost, thereby ensuring consistency

with the principles set forth in §252(d)(3) of the 1996 Federal Act. SNET notes that this method will be used only for purposes of establishing initial wholesale rates for Telco services and that any subsequent rate changes will reflect the TSLRIC cost of providing the respective wholesale service. SNET further proposes in this proceeding to abide by the approved tariffs for intrastate and interstate access and unbundled network elements previously approved by the Department with no modifications.

SNET represents to the Department that its actions and the pricing methods it proposes to employ at the Telco conform with cost and pricing mechanisms specified by §16-247b of the Conn. Gen. Stat. and §252(d)(3) of the 1996 Federal Act. In the proposed method of calculating Telco wholesale prices, SNET proposes to have the Telco utilize its current retail rate as a surrogate base for determining the initial wholesale offering rate for CLECs and IXC's. SNET notes that these methods will be used only for purposes of establishing initial wholesale rates for Telco services and that any subsequent rate changes will reflect the TSLRIC cost of providing the respective wholesale service.

After evaluating the proposal, the Department finds several aspects of this part of the proposed initiative to be of some concern.

First, SAI proposes to assume responsibility for all of the retail service offerings currently available from the Telco. However, SAI has not expressed any substantive commitment to ensure long-term retail availability of those services beyond suggesting that its offerings will be subject to price adjustments to reflect the actual costs of providing such services and competitive market conditions. Implicit within that commitment is an assumption by SNET that equivalent retail services will be available from any number of competing CLECs should SAI choose in the future to discontinue support for any current service offering because it is unprofitable.

In the Department's view, SAI is free, in principle, to withdraw from any particular retail segment of the telecommunications market at any particular time without interference by the Department. Accordingly, the commitments expressed in this proposal reflect nothing more than the current business definition and performance expectations envisioned for SAI by SNET. However, if the performance expectations of SAI prove unachievable under the current business definition, the Department assumes that SNET will revise the business definition of SAI, rather than accept lower performance by the business unit. The most likely result of a new business definition will be a reduction in the number of retail offerings and aggressive repricing of marginal retail offerings to stimulate outward movement.

Either strategy constitutes a legitimate response available to SAI in a fully competitive marketplace. However, it must be noted that the possibility that such an act might be initiated in the future does not afford sufficient precedent for any preemptive action by the Department. Nothing presented by any participant in this proceeding indicates that SAI will, in the immediate future, substantially reduce the number of retail offerings it supports or invoke unwarranted price adjustments to shift unwanted retail subscribers. The Department can only impress upon SAI the importance of the public's

trust conferred upon it by this Decision and warn them to not jeopardize it by any indefensible act.

Separately the Department examined in this proceeding the subject of Custom Service Arrangements (CSAs) and Competitive Custom Service Arrangements (CCSAs). Both agreements constitute customized business service arrangements some of which include centrex service, digital centrex service, wide area telephone services and "800" services. Though the number of subscribers currently employing these services is relatively small compared to users of less complex Telco services the Department believes that any willful disregard of their interests in this proceeding would be indefensible. Furthermore, the Department is committed to ensuring that all aspects of the retail market are fully examined and addressed in this proceeding.

Conn. Gen. Stat. §16-247f deems Centrex, digital centrex, wide area telephone services and "800" services to be competitive retail offerings of the Telco and requires that this Department treat them as such. Nothing presented in this proceeding suggests that continued treatment of these services as competitive services by the Department presents any harm to either providers or subscribers that requires additional action by the Department. It is important to note, however, that treatment of these services as competitive applies only to the respective retail service and not its wholesale counterpart. The Telco will be required at the conclusion of this proceeding to file wholesale tariffs for centrex, digital centrex, wide area telephone services and "800" services as noncompetitive wholesale offerings subject to all requirements of a noncompetitive service offering.

Further, the Department is of the opinion that such contracts represent duly negotiated arrangements and preservation of those agreements is in the best interests of the signatory parties. Accordingly, the Department will respect the terms and conditions set forth in those contractual arrangements considered to be Competitive Custom Service Arrangements (CCSAs); that is, those agreements which govern provisioning of centrex, digital centrex, wide area telephone services and "800" services. These agreements will not be subject to any "fresh look" provisions. Additionally, the Department will permit SAI to assume the responsibilities for administering these agreements for the balance of their contract life on January 1, 1998. Accordingly, SAI will be directed in this proceeding to file with the Department no later than December 17, 1997 tariffs for all CCSA agreements reflecting the approved change in retail service provider.

Separately, the Department examined the remaining Custom Service Arrangements and concluded that these agreements do not benefit from the protections afforded CCSAs in §16-247f and must be subjected to a "fresh look" by all parties. Accordingly, all Custom Service Arrangements not otherwise considered CCSAs will be open for renegotiation on January 1, 1998. The Department is of the opinion that if fair opportunity to compete is to be afforded other CLECs wholesale tariffs from the Telco for principal network and facility components must be readily available for their examination and use. Therefore, the Telco will be required to file with the Department, no later than December 10, 1997, wholesale tariffs to support current CSAs.

Independent of any tolerance evidenced by the Department in this Decision of a future SAI product withdrawal, the Department will not be as forbearing if in the future the Telco proposes to withdraw a wholesale service from general availability or to adjust wholesale prices outside the range permitted under current authority granted in Docket No. 95-03-01. Nothing presented in this proceeding alters the opinion of the Department that the Telco remains subject to the duties and obligations set forth in §§251 and 252 of the 1996 Federal Act, §16-247b of the Connecticut General Statutes and Docket No. 95-03-01. Furthermore, SNET seems to accede to these conditions when it requests the Department continue to regard and regulate the Telco as an ILEC. Accordingly, the Department considers the offer to continue providing exchange access services and interexchange access services to CLECs and IXCs not as a discretionary decision of SNET but rather an ongoing statutory duty and obligation of the Telco. Any modification to the current complement of Telco services, either in scope or price, requires the review and approval of the Department. Any concurrence by this Department with any proposed action of SNET should not be construed to infer or imply that the Department's authority over exchange access services and interexchange access services provided by the Telco has been abridged or relinquished. The Department considers that its authority to review and restrict the actions of the Telco in the provisioning and pricing of exchange access services and interexchange access services unaffected by the outcome of this proceeding.

Separately, the evidence submitted in this and prior proceedings strongly suggests that the principal determinant of future competition in the Connecticut telecommunications marketplace will be the universe of products and services available to all CLECs from the Telco. Any reduction in the future number of service offerings available from the Telco is contrary to the goals of the Department and state and federal statutes. Accordingly, the Department will aggressively seek to increase the range of telecommunications services and unbundled network elements that will be available in the future to the CLECs from the Telco. The Department will ensure the widest possible choice for retail subscribers of the CLECs in the evolving marketplace of the future. Under direct questioning by members of the Department, firm commitments were offered by Company witnesses and counsel to technological innovation and investment by the Telco to serve the future needs of the CLECs and their customers. The Department considers those technology commitments to be vital to the realization of the goals set forth in Public Act 94-83 and will consider SNET's commitment to their pursuit to be a firm expression of their future intent.

The Department is of the opinion that current regulatory authority vested with it under both federal and state statutes is sufficient to ensure that any proposed act by the Telco to reduce the complement of product/service offerings available to CLECs will be critically scrutinized by the Department for its impact upon the development of competitive markets in Connecticut. Any such instance where the Telco petitions the Department to withdraw an existent tariff will necessitate formal review and solicitation by the Department of the affected CLECs for their interest in the matter. If it is subsequently determined that any act on the part of the Telco to reduce the number of wholesale offerings to the CLECs is intentionally directed at stifling competitive

initiatives, the Department will immediately reexamine SNET's reorganization and take actions necessary to restore competitive balance in the market.

With regard to the issue of future pricing of Telco wholesale services, the Department is equally consistent in its views. First, retail prices set by SAI are of only nominal interest to the Department as a matter of comparative reference to current retail prices of the Telco and the proposed retail prices of competitors. However, the Department is extremely interested in the wholesale prices sought by the Telco in the future. For purposes of setting wholesale prices, the Telco will generally subscribe to the pricing principals set forth in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22. In each of those instances, the Department expressed its support for pricing methodologies constructed upon TSLRIC. TSLRIC-based pricing methodologies promote both economic efficiency and competitive development. In contrast, avoided cost methodologies such as those detailed in §252(d)(3) of the 1996 Federal Act do not promote economic efficiency and will not be applicable to the Telco after the current reorganization is in effect.

Finally, any approval by the Department of SNET's proposed wholesale tariffs does not constitute automatic reclassification of the respective services or network elements as competitive. The Department is of the opinion that all wholesale services will be considered noncompetitive until such time as SNET can satisfy the requirements of Conn. Gen. Stat. §16-247f for the respective wholesale service. Accordingly, all wholesale pricing practices will conform to the rules set forth in the Department's March 13, 1996 Decision in Docket No. 95-03-01.

## **8. Future Telco Service Offerings**

SNET proposes to price all new services offered by the Telco at TSLRIC plus a contribution to overhead consistent with the previous instructions of this Department in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22. Opponents of such methods express concern that, even though they conform with specific standards set forth by the Department in the Decisions in these dockets and general instructions set forth in Conn. Gen. Stat. §16-247b(b), they violate the intent of the federal statute to promote the development of competitive markets.

The Department's view on the issue of future Telco service offerings is relatively consistent with that expressed above for current Telco service offerings. Irrespective of the support given to SNET's reorganization plan, the Department remains committed to a policy that encourages the Telco to continually increase the range of future telecommunications services available for use by all CLECs. The underlying facility for such policy is the continuation of technology and infrastructure commitments made by the Telco into the future. See Docket No. 91-10-06, DPUC Review of Telecommunications Policies: Infrastructure Modernization, Competition, Pricing Principles and Methods of Regulation, Docket No. 94-07-01, The Vision for Connecticut's Telecommunications Infrastructure, Docket No. 94-10-01, DPUC Investigation into the Southern New England Telephone Company's Cost of Providing Service, and the commitment by SNET in Docket No. 96-01-24, Application of SNET



Personal Vision, Inc. for a Certificate of Public Convenience and Necessity to Provide Community Antenna Television Service. The Department is assured a reasonable level of investment in new technology and infrastructure improvements by the Telco, thereby ensuring additional capabilities to all CLECs and the realization of greater competition.

As a matter of course, the Department concurs with SNET that the pricing of any new services developed by the Telco and made available to CLECs will be priced in accordance with the methodologies prescribed by the Department in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22. No evidence has been presented in this proceeding to support a different conclusion. Accordingly, cost support for telecommunications services not currently provided by the Telco must be filed with the Department in accordance with the rules of construction set forth for such studies in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22 prior to approval by the Department of any associated tariff offering.

## **9. Telco Assets**

SNET proposes to retain ownership and operational control of all distribution plant and core network infrastructure at the Telco and confer all obligations associated with that responsibility to the Telco. SNET acknowledges that its decision, in part, reflects statutory strictures placed upon ILECs by §251(h) of the 1996 Federal Act. By some interpretations of that provision, if SNET were to assign Telco network assets to SAI of sufficient magnitude to warrant the FCC to make a finding that SAI "substantially replaced" the Telco, it would be necessary to regard SAI as a successor to the Telco and impose a broader set of rules and regulations to govern its actions in the market. However, SNET has proposed to only transfer those assets that are necessary to manage the retail marketing and customer service functions of the Telco and not the engineering or operational activities associated with service provisioning.

The Department has thoroughly examined the asset transfer program proposed by SNET in this proceeding and considers the reassignment of the referenced assets to be in the interest of customer service and competition. It is clear from the testimony that the assets proposed for transfer to SAI are only those systems and functions developed to support the retail function at the Telco and would be of little or no use in the wholesale market environment envisioned for the Telco by SNET. The Department will thus approve the limited transfer of assets to SAI as proposed in this proceeding but will not permit any future transfer of infrastructure or network related assets to SAI or any other affiliate business unit of the Telco without use of competitive bidding procedures and Departmental approval. Furthermore, the economic cost to SAI and SNET for the associated Telco assets will be the depreciated book value or retail market value, whichever is higher, consistent with the policies of the Department regarding asset transfers between affiliate business units. All proceeds associated with the transfer will be credited to the reserve deficiency of the Telco. By pursuing this policy the Department believes its actions provide substantive compensation to the Telco, conform with rules governing affiliate transactions and the Department's policies, and materially benefits the public.

## 10. Telco Business Definition

SNET also proposes to limit the business purpose of the Telco to supporting the need for telecommunications services and unbundled network elements of CLECs and IXC's certified to operate in Connecticut. SNET submits that its proposal will benefit both consumers and competitors by divesting the Telco of its retail activities and allowing the Telco to concentrate fully on its responsibilities as a wholesale services provider to CLECs and IXC's.

As noted above, the Department addressed the issue of the Telco's withdrawal from the retail market and concluded that such an act is permissible under both state and federal statutes. The subject of business definition, however, is broader than simply the question of retail marketing and warrants comment for future reference. The Department has expressed the opinion in earlier proceedings that the responsibility for defining a business enterprise and accepting accountability for its consequent performance is the responsibility of management. State and federal law imbue the Department with only marginal prescriptive powers in matters of organizational design. The role accorded the Department in organizational design is further limited to issues of abuse evidenced in affiliate relationships involving regulated business units and nonregulated enterprises that share common ownership.

Historically, the Department has evidenced significant interest in the organizational structures proposed by SNET for its subsidiary business units. In large part the Department's interest centered on the scope of services performed by the Telco on behalf of the nonregulated subsidiaries and the reimbursement practices associated with those services. In the past two decades, both the scope and scale of services performed on behalf of nonregulated subsidiaries increased significantly in response to the organizational structure erected by SNET that emphasized the benefits of shared operational, administrative and support services.

SNET has proposed in this proceeding to implement an organizational structure that emphasizes specialization at the market level for its wholesale and retail functions. In order to maximize the benefits of that specialization SNET proposes to assume responsibility at the corporate level for various administrative and support functions that are common to all business units. This will afford SNET the opportunity to realize the highest level of scale economies in areas that are not service critical but reasonably important to the efficient operation of the corporation. With implementation of this program, the Telco will relinquish any current responsibilities for support of nonregulated business units thereby reducing, if not completely eliminating, direct transactions between SNET's regulated and nonregulated business units.<sup>19</sup>

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<sup>19</sup> SAI will, under the terms and conditions of the Proposal, purchase for resale telecommunications services and unbundled network elements from the Telco. These transactions can be lawfully conducted by use of generally available wholesale tariffs, affiliate service agreements or negotiated interconnection agreements. SNET has expressed its intent in this proceeding to employ affiliate service agreements for transactions between SNET and the Telco and SAI for administrative support services; and wholesale tariffs and negotiated interconnection agreements for business relationships between SAI and the Telco. The differentiation of contractual tools used between subsidiaries and

After consideration of the proposed realignment of administrative responsibilities between the Telco and SNET, the Department finds that adoption of SNET's proposal reduces the risk of cross-subsidization between regulated and nonregulated enterprises. Furthermore, the reorganization of roles and responsibilities does not constitute a threat to the development of competition. Accordingly, the Department will endorse the proposed realignment of both market and administrative responsibilities as being in the public interest and permit implementation by SNET at the earliest possible opportunity.

### **11. Telco Affiliate Transactions**

In conjunction with the envisioned realignment of responsibilities, SNET proposes to conduct all business transactions between the Telco and SAI and the Telco and SNET in accord with Parts 32 and 64 of FCC regulations as amended by the 1996 Federal Act. SNET's proposal reflects the importance of current accounting rules to ensure fair and equitable competition in the evolving telecommunications market. These rules are considered by the regulatory community to be critical to ensuring business relationships between affiliate do not produce unwarranted advantages in a competitive marketplace.

Under the terms of the SNET proposal, the Telco will remain a regulated enterprise with a significant role in the development of a competitive telecommunications market. The Proposal does not in any way diminish the importance of the Telco to plans and strategies of the other participating CLECs. In the proposed reorganization the Telco will continue to serve as the principal source of telecommunications technology and infrastructure for virtually every CLEC operating in Connecticut for the near term. Consequently, the scope and scale of business dealings between the Telco and SAI is of prime interest and concern to every prospective entrant to the Connecticut market. The Department is sensitive to the concerns expressed by competitors in this proceeding and must assure them and the public that transactions conducted between the two affiliated business units will conform to the available rules and regulations.

As discussed above the Department concluded that any assets transferred from the Telco to SAI must be done in accordance with rules set forth in Parts 32 and 64 of the FCC regulations and must be valued at their depreciated book or market price, whichever of the two is higher. This policy ensures the public will benefit at least nominally from the proposed reorganization. Likewise, the Department will order similar accounting treatment for any assets transferred to SNET by the Telco in consequence of consolidating administrative and directory publishing activities at the corporate level. The value accrued to the Telco for any assets transferred to SAI or to SNET in conjunction with this proposal will be credited to the depreciation reserve account of the Telco.

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those used in relationships with the corporate parent illustrates the scope of reorganization and specialization envisioned by SNET with its proposal.

The policies adopted by the Department and the FCC have sought to ensure against any abuse of the affiliate relationship by either the corporate parent or the unregulated affiliate not subject to the rules and regulations of this Department or the FCC. The strictures placed upon affiliate relationships have generally focused on the role and relationship of any business unit or corporate entity to the regulated business unit. In instances where the regulated business unit is not a party to a business arrangement the Department has generally shown limited interest. That policy remains unchanged by enactment of both Public Act 94-83 and the 1996 Federal Act.

Public Act 94-83 is silent on the issue of affiliate interests. In marked contrast, the 1996 Federal Act devotes considerable time to the subject of affiliate transactions involving Bell Operating Companies, Exempt Holding Companies and Registered Holding Companies.<sup>20</sup> Section 272(b) of the 1996 Federal Act outlines five structural and transactional standards that must be satisfied by any proposed affiliate relationship to warrant acceptance of the RBOC's participation by the regulatory community. The Department has carefully considered those tests and has concluded that they merit adoption in this proceeding to serve as a benchmark for evaluating the scope of the proposed relationship and the scale of the envisioned transactions.

Section 272(b) of the 1996 Federal Act seeks to provide the safeguards essential to full and fair competition by an ILEC in a competitive marketplace. It presumes that any affiliate entering into a business relationship with the ILEC will: a) be subject to substantially less regulation than that accorded the ILEC; b) experience a substantially higher competitive threat level than the ILEC; and c) be relatively vulnerable to influence. The standards set forth in §272(b) of the 1996 Federal Act are thought by some members of the telecommunications community to be excessive and biased against the ILECs. The Department has given serious consideration to this concern and finds nothing presented in §272 (b) of the 1996 Federal Act to be excessive, discriminatory or patently unfair to those subject to the standards set forth therein. The Department considers the standards set forth as reasonable and proper for use in this proceeding and specifically applicable to the proposal set forth by SNET.

To satisfy the conditions set forth in §272(b)(1) of the 1996 Federal Act, SNET must certify to the Department that it will operate SAI now and in the future as an independent operating unit from the Telco. Any failure to demonstrate that SAI is an independent operating unit will be considered sufficient cause for the Department to rescind SAI's CPCN and initiate a reexamination of the Department's actions in this Decision. SNET has proposed, and reaffirmed in the testimony of its witnesses, that SAI will function as an independent business unit serving only retail end-user customers. Similarly, representations have been made in this proceeding that the Telco will restrict its business interests to the wholesale market supporting only CLECs and

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<sup>20</sup> SNET does not fall into any of these classifications and, therefore, not legally subject to the provisions outlined in §103 and § 272 of the 1996 Federal Act unless the Department asserts its authority under §261(c) of the 1996 Federal Act and deems application of the Section to SNET as necessary to further competition in the provision of telephone exchange service or exchange service.

IXCs. These attestations of SNET and SAI management offer sufficient evidence to conclude that SAI will operate as an independent business unit in compliance with §272(b)(1) of the 1996 Federal Act.

To satisfy the conditions set forth in §272(b)(2) of the 1996 Federal Act, SNET must certify to the Department that SAI will maintain, books, records, and accounts in the manner prescribed by the Department and the FCC separate from the books, records and accounts maintained by the Telco. Any failure by SNET at the time of a corporate audit by this Department to demonstrate that SAI maintains independent financial records or that such records fail to conform with the requirements of this agency will be considered sufficient cause for the Department to rescind SAI's CPCN and initiate a reexamination of the Department's actions in this Decision. SNET acknowledged in its proposal, and reaffirmed in the testimony of its witnesses that SAI will comply with the requirements set forth by this section of the 1996 Federal Act. The Department will consider that sufficient evidence of intent. The warranties of both SNET and SAI management are sufficient to conclude that SAI will comply with the financial accounting requirements set forth in §272(b)(2) of the 1996 Federal Act.

To satisfy the conditions set forth in §272(b)(3) of the 1996 Federal Act, SNET must certify to the Department that SAI will have separate officers, directors and employees from the Telco. Any failure by SNET to maintain separate officers, directors and employees from the Telco will be considered sufficient cause for the Department to rescind SAI's CPCN and initiate a reexamination of the Department's actions in this Decision. SNET acknowledged in its proposal, and reaffirmed in the testimony of its witnesses, that SAI will comply with the requirements set forth by this section of the Act. The Department will consider that sufficient evidence of intent. The warranties of SNET and SAI management are sufficient to conclude that SAI will comply with the managerial requirements set forth in §272(b)(3) of the 1996 Federal Act.

To satisfy the conditions set forth in §272(b)(4) of the 1996 Federal Act, SNET must certify to the Department that SAI will not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Telco. Any failure by SNET to maintain such legal protections for the Telco will be considered sufficient cause for the Department to rescind SAI's CPCN and initiate a reexamination of the Department's actions in this Decision. SNET acknowledged in its proposal, and reaffirmed in the testimony of its witnesses, that SAI will be capitalized and funded in a manner that complies with the requirements set forth by this section of the 1996 Federal Act. The Department will consider that sufficient evidence of intent. The warranties of both SNET and SAI management are sufficient to conclude that SAI will comply with the requirements set forth in §272(b)(4) of the 1996 Federal Act.

To satisfy the conditions set forth in §272(b)(5) of the 1996 Federal Act, SNET must certify to the Department that SAI will conduct all transactions with the Telco on an arm's length basis and with such transactions reduced to writing and available for public inspection. Any failure by SNET to ensure such provisions are made in the business arrangements between SAI and the Telco will be considered sufficient cause for this Department to rescind SAI's CPCN and initiate a reexamination of the Department's

actions in this Decision. SNET acknowledged in its proposal, and reaffirmed in the testimony of its witnesses, that SAI will avail itself of general tariffs of the Telco and/or a negotiated interconnection agreement to govern its relationship with the Telco. Both of these administrative mechanisms comport with requirements set forth by §272(b)(5) of the 1996 Federal Act. The Department will consider that sufficient evidence of intent. The warranties of both SNET and SAI management are sufficient to conclude that SAI will comply with the transactional framework set forth in §272(b)(5) of the 1996 Federal Act. Furthermore, SAI and the Telco will be directed to file a negotiated interconnection agreement for review with this Department no later than 90 days prior to the filing of SAI's first retail local service tariff.

In summary, the Department finds that the proposed plan of reorganization and affiliate relationships is consistent with the requirements set forth in §272(b) of the 1996 Federal Act and that the public's interest in the proposed business relationships between the Telco and SAI is sufficiently protected. Accordingly, the Department approves SNET's Plan (with the associated modifications discussed above) until such time as it can be demonstrated that the proposed organizational structure has impeded the development of competition and/or does not comport with the requirements set forth in §272(b) of the 1996 Federal Act. The Department will also permit SNET to conduct a range of business transactions and services between, and for, its subsidiary business units until such time as it can be demonstrated that such transactions do not comport with §272(b)(5) of the 1996 Federal Act.

## **VII. FINDINGS OF FACT**

1. This proceeding reflects the Department's need to examine potential consequences of adoption of any financial, structural and/or operational strategies presented by SNET as responses to material changes in state and federal telecommunications policy.
2. No specific statutory provisions exist that prescribe or preclude SNET from segregating its retail and wholesale functions into two independently-operated business units.
3. Management must be permitted to manage the affairs of the business without undue and unwarranted regulatory involvement.
4. Any changes in corporate strategy and/or business unit definition are the sole responsibility of that Board of Directors and its management designees consistent with the body of corporate law governing such decisions.
5. No compelling reason or evidence exists that requires the Department to intercede in SNET's corporate realignment of marketing and customer service responsibilities between the Telco and SAI.
6. SNET will remain accountable for the actions of the Telco and SAI, irrespective of the form of regulatory treatment accorded them under federal and state

statutes.

7. A successor includes another corporation which by a process of amalgamation, consolidation, or duly authorized legal succession, has become vested with the rights and has assumed the burdens of the first corporation.
8. The Telco and SAI operated as independent business units of the SNET Corporation prior to the date of enactment of the 1996 Federal Act and will both continue to operate as independent business units when the reorganization is implemented.
9. The Telco has not relinquished any of the interconnection responsibilities prescribed under §251(a), §251(b) or §251(c) of the 1996 Federal Act or those prescribed by §16-247b(b) of the Conn. Gen. Stat.
10. The Telco will continue to retain full ownership and operational responsibility of the public switched network consistent with the provisions set forth in §16-247b(b) of the Conn. Gen. Stat. and §251(b) and §251(c) of the 1996 Federal Act
11. Section 251(c)(4)(A) of the 1996 Federal Act distinguishes between the duties and obligations for dealing with qualified telecommunications carriers and those prescribed for dealing with retail subscribers.
12. ILECs have no discretionary authority in matters related to interconnection with a qualified telecommunications carrier.
13. ILECs are free to offer all, some or none of their network facilities and/or capabilities directly to the retail telecommunications market.
14. ILECs choosing to offer a particular retail service are obligated to make available an equivalent wholesale offering to qualified telecommunications carriers at a wholesale price set in accordance with terms contained in §252(d)(3) of the 1996 Federal Act.
15. The wholesale pricing strictures prescribed in §252(d)(3) of the 1996 Federal Act apply only to those telecommunications services offered by the ILEC on a retail basis to subscribers who are not telecommunications carriers.
16. No reasons exist or evidence was presented that prevents SNET from withdrawing from the retail market coincident with its reorganization on January 1, 1998.
17. SNET's proposed treatment of corporate reorganization implementation costs, information and pricing policies is acceptable and does not warrant denial of its request to transfer the Telco's retail customer base to SAI.

18. Transfer of certain customer information from the Telco to both SAI and other recipient CLECs coincident with the proposed realignment of retail responsibilities is essential for effective management of the retail function and in the best interests of the customer.
19. No evidentiary basis exists to impose any additional duties, obligations and/or requirements on SNET or its retail business unit beyond those currently specified by state and federal acts.
20. An en masse transfer of Telco retail customers to SAI such as that proposed by SNET is not in the public's best interest and cannot be permitted by the Department.
21. An election process permitting Telco subscribers to elect a preferred retail service provider is consistent with the intent of both state and federal acts.
22. All CLECs certified on or before October 31, 1997 will be permitted to participate in the election process for their respective MLMA's.
23. The election process will be completed by July 1, 1998.
24. Section 16-247g(b)(3) of the Conn. Gen. Stat. specifies only three conditions that may be considered by the Department when evaluating an applicant's petition, financial resources, managerial ability and technical competency, is prescriptive, and provides little room for interpretation
25. SAI's application for a CPCN in Docket 97-03-17 shall be subject to the same tests, standards and requirements applied to any nonaffiliated CLEC applicant.
26. No evidence or argument has been presented that would require the Department to revise or rescind the regulatory framework prescribed for the Telco in Docket No. 95-03-01.
27. The Telco remains subject to the duties and obligations set forth in §§251 and 252 of the 1996 Federal Act and §16-247b of the Conn. Gen. Stat.
28. The Telco has not expressed an interest in relinquishing any of the responsibilities entrusted to an ILEC under §§251 or 252 of the 1996 Federal Act and §§ 16-247b, 16-247g and 16-247k of the Conn. Gen. Stat.
29. Pricing of all future Telco wholesale service offerings will be done in accordance with pricing methodologies prescribed by the Department in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22.
30. SAI will operate as an independent business unit in compliance with §272(b)(1) of the 1996 Federal Act.



31. SAI will comply with all financial accounting requirements set forth in §272(b)(2) of the 1996 Federal Act.
32. SAI will comply with all managerial requirements set forth in §272(b)(3) of the 1996 Federal Act.
33. SAI will comply with all requirements set forth in §272(b)(4) of the 1996 Federal Act relative to credit arrangements that permits a creditor, upon default of SAI, to have recourse to the assets of the Telco.
34. SAI will comply with the transactional framework set forth in §272(b)(5) of the 1996 Federal Act.

## **VIII. CONCLUSION AND ORDERS**

### **A. CONCLUSION**

This proceeding is the culmination of the Department's efforts to implement the statutory requirements introduced in Public Act 94-83 and the 1996 Federal Act. The Department's review of SNET's proposed reorganization of operations wherein SNET proposes to separate the retail and wholesale business units represents the first full-scale examination of SNET under the terms and conditions outlined by these acts. Based on its investigation, the Department concludes that SNET's reorganization comports with the requirements of Public Act 94-83, the 1996 Federal Act and other Department and FCC directives.

The Department also concludes that SAI is not a successor or assign of the Telco warranting treatment as an ILEC pursuant to §251(h)(1)(B)(ii) of the 1996 Federal Act. Following adoption of the proposal, the Telco will continue to act as a public service company and an ILEC, retaining full network ownership and operational responsibility. The Telco will also be subject to the provisions of §§16-247b(b) and 16-262i of the Conn. Gen. Stat., the March 13, 1996 Decision in Docket No. 95-03-01 and §§251 and 252 of the 1996 Federal Act. Pricing of the Telco's wholesale services will be unaffected by the outcome of this proceeding and should be conducted pursuant to the Department's Decisions in Dockets Nos. 94-10-01, 95-06-17 and 96-09-22. Technology commitments made by SNET to the Department in Dockets Nos. 91-10-06, 92-09-19, 94-10-04, 95-06-17, 95-11-08, 96-09-22 and 96-01-24 ensure adequate investment and innovation in the core network to conclude that infrastructure enrichment will continue on the part of the Telco in the future.

If and when SAI's application for a CPCN is approved in Docket No. 97-03-17, it will be certificated to offer to all end users a variety of telecommunications and information services including local exchange service. The record of this proceeding does not indicate that the act of offering retail telecommunications services via the SAI business unit exposes the general public to any greater risk or mistreatment than if the public were acquiring such services from any other CLEC providing such service in Connecticut. Therefore, the Department will not require any additional regulatory tests,

standards or requirements beyond those specified in §16-247g of the Conn. Gen. Stat. and the March 15, 1995 Decision in Docket No. 94-07-03 be applied to SAI in Docket No. 97-03-17.

The Department is cognizant that some potential risk to the public and the future development of competition is present resulting from SNET's organizational restructuring. To address this risk, the Department has required that certain provisions be made (e.g., advanced customer billing), to provide Connecticut consumers with the opportunity to control their telecommunications decisions. Balloting will be conducted beginning March 1, 1998 and completed by July 1, 1998. The Department believes that such a program will be the most equitable process for realigning retail responsibilities within SNET.

Finally, adoption of SNET's Plan will reduce the risk of cross-subsidization between regulated and nonregulated enterprises and does not constitute a threat to the development of competition. SNET's Proposal is also consistent with the requirements contained in §272(b) of the 1996 Federal Act and that the public interest in the proposed business relationships between the Telco and SAI is sufficiently protected.

Therefore, SNET's reorganization of operations as modified above, is in the public interest and is hereby approved subject to SNET's compliance with the following orders.

#### **B. ORDERS**

For the following Orders, please submit an Original and five copies of the requested material, identified by Docket Number, Title and Order Number to the Executive Secretary.

1. No later than September 1, 1997, SNET shall file with the Department a proposed implementation plan detailing its corporate reorganization and the Telco's phased withdrawal from the retail telecommunications market between March 1, 1998 and July 1, 1998.
2. No later than December 10, 1997, the Telco shall file with the Department wholesale service tariffs reflecting its withdrawal of from the retail service market.
3. No later than 90 days prior to SAI's filing of retail local exchange service tariffs with the Department, the Telco and SAI shall file a proposed interconnection agreement with the Department.
4. No earlier than January 1, 1998, all current subscribers of special service contracts, custom service arrangements, special assemblies and/or other nontariffed noncompetitive service offerings of the Telco must be provided an opportunity to negotiate equivalent service commitments from any qualified CLEC.

5. SAI shall assume all financial liability for the implementation costs incurred by the Telco.
6. The Telco shall segregate all costs associated with the transfer and establish an implementation account wherein all the segregated costs from the date of approval of the proposed transfer will be recorded pursuant to provisions set forth in §272(c)(3) of the 1996 Federal Act.
7. No later than January 1, 1998, SNET shall notify all retail business and residence local exchange services customers of the proposed realignment and of its intent to relinquish retail responsibilities for their service.
8. SNET shall provide to the independent ballot administrator by November 15, 1997, all information deemed necessary by the Administrator to efficiently and effectively conduct the election process in the prescribed timeframe.

**DOCKET NO. 94-10-05 DPUC INVESTIGATION OF THE SOUTHERN NEW  
ENGLAND TELEPHONE COMPANY AFFILIATE  
MATTERS ASSOCIATED WITH THE IMPLEMENTATION  
OF PUBLIC ACT 94-83**

This Decision is adopted by the following Commissioners:

Thomas M. Benedict

Jack R. Goldberg

Janet Polinsky

**CERTIFICATE OF SERVICE**

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

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Robert J. Murphy  
Executive Secretary  
Department of Public Utility Control

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Date

## **Local Exchange Carrier Selection Process**

CLECs must be certified no later than 10/31/97.

Ballot solicitation to be conducted by an independent entity, selected and supervised by DPUC and paid proportionately by all CLECs

Ballots will be pre-coded with name, address and phone number. Bar-codes will be utilized when possible to facilitate processing

All participating CLECs will be issued a 3 digit identification number by lottery conducted 90 days prior to start of balloting.

Customers will receive an election package comprising a coded ballot and an informational insert developed by each of the participating CLECs (maximum: one page per CLEC). A listing of all participating CLECs capable of serving their respective needs will be included (order of appearance will be periodically rotated on a random basis).

Customer completes ballot by entering 3 digit number for selected CLEC and returns to the program administrator by mail within four weeks.

State is divided into 3 areas for administration of the process (East, Central and West).

Ballots will be issued to all active (as of February 1) business and residence customers within the East, Central and West areas on March 1, April 1 and May 1, 1998, respectively.

Ballots will be issued on May 1 to all new business and residence customers establishing service after February 1, 1998.

All ballots must be postmarked by March 31, 1998, April 30, 1998 and May 31, 1998 respectively to permit sufficient processing time and default allocation

Customers not returning a ballot within the specified time period will be assigned to a CLEC in proportion to the results of those returning ballots for each area.

Default customers will be notified by mail of their interim CLEC assignment and provided an additional 14 days to elect a preferred CLEC

Customers elections and information will be electronically transferred to the respective CLEC on a daily or weekly basis (to be determined by the recipient organization) and simultaneously to SNET (Telco) for reassignment to designated carrier (maximum 4 weeks to transfer from SNET to new carrier).

Balloting and transfer is complete with a final report on outcome (numbers & statistics) filed with DPUC by ballot administrator in July 1998.